

November 13, 2020

Via ECF

Honorable Paul G. Gardephe
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

**Re: United States v. Avenatti, No. S1 19 Cr. 373 (PGG)
Motion for an Additional 60-day Adjournment of
Sentencing Date and Filing of Sentencing Submissions**

Dear Judge Gardephe:

Mr. Avenatti's sentencing hearing is currently scheduled for December 9, 2020. We write to respectfully request an additional adjournment of the sentencing date for approximately sixty (60) days, until early February 2021, if the Court's schedule permits. Mr. Avenatti further requests a corresponding adjournment of the dates for the defense and the government to file their sentencing submissions.

The government does not consent to a 60-day adjournment, but does consent to a shorter adjournment until December 21-22, 2020.

As this Court is aware, on February 14, 2020, a jury found Mr. Avenatti guilty of the three counts charged against him in the Superseding Indictment. At the time, Mr. Avenatti was in custody pursuant to a remand order entered by United States District Judge James Selna of the Central District of California. On April 24, 2020, Mr. Avenatti was temporarily released to home confinement in California pursuant to conditions set by Judge Selna in the wake of the COVID-19 pandemic. *See United States v. Avenatti*, Case No. SA-CR-19-61-JVS (ECF No. 154:7). Mr. Avenatti remains under home confinement in Venice, California. Undersigned counsel (Mr. Srebnick) is based in Miami, Florida, while undersigned counsel (Ms. Perry) is based in New York.

COVID-19 cases continue to dramatically spike around the United States. Over the last seven days, there have been an average of 134,000 new cases reported on a daily basis, which is more than at any time since the onset of the pandemic. Yesterday, there were more than 163,000 newly reported cases, shattering the previous record. More than 67,000 people are currently hospitalized with COVID-19 in the United States, an all-time high. Florida, California, and New York are likewise experiencing renewed surges over the last month. The

COVID-19 positivity rate in New York City is at its highest level since June. News reports suggest that schools in New York City may close again as early as this Monday. Medical professionals expect cases to spike even further after the Thanksgiving and Christmas holidays. Plainly, this is a time when people in the United States should be curtailing air travel to minimize risk and the spread of the virus.

On November 10, 2020, the United States District Court for the Southern District of New York issued a new “SDNY Protocol for Domestic Travelers.” That protocol prohibits individuals from entering the courthouse if they have been in a state other than New York, Connecticut, New Jersey, Massachusetts, Pennsylvania, and Vermont in the previous 14 days for more than 24 hours, unless they meet the following criteria:

1. Took a COVID PCR diagnostic test within three days prior to departure from the state of embarkation;
2. Took another COVID PCR diagnostic test on day 5 after arrival in New York; and
3. Received negative results from both tests.

The practical effect of this new protocol is that undersigned counsel (Mr. Srebnick), Mr. Avenatti, and Mr. Avenatti’s two daughters, both of whom are attending high school and wish to attend Mr. Avenatti’s sentencing hearing, must travel to, and remain in, New York for at least seven days prior to the sentencing hearing to ensure that there is sufficient time for everyone to schedule the accepted test and receive the (hopefully) negative results. Mr. Avenatti’s first wife must accompany her minor daughters and also wishes to attend the sentencing hearing; she has had medical issues that place her in a high-risk category. In addition, undersigned counsel (Ms. Perry) is planning to travel (by car) to the Washington, D.C. area over the Thanksgiving holiday; because she is scheduled to return to New York within the 14-day period prior to the scheduled sentencing date, the new protocol would require Ms. Perry to get tested for COVID-19 over the holiday weekend while in Washington, D.C., and then again upon her return to New York.

For these reasons, Mr. Avenatti respectfully requests that the Court grant an additional adjournment of the sentencing of 60 days, until early February 2021, before requiring him, his family, and undersigned counsel to travel to New York for sentencing.

A further delay would not prejudice the government. Mr. Avenatti remains on home confinement, subject to restrictive conditions, and continues to prepare for multiple trials in connection with two additional indictments. The alleged victims in the case – Coach Gary Franklin and Nike – have already testified extensively at trial, so there is no risk that the victims will not be heard.

In the event the Court denies the request for a 60-day adjournment, Mr. Avenatti requests an adjournment of 12 days, until December 21-22, 2020 (if the Court's schedule permits), so that Mr. Avenatti's daughters may attend the sentencing hearing after they complete their high school semester and to avoid the concern that it may prove impossible for Ms. Perry to obtain PCR testing in Washington, D.C., over the Thanksgiving holiday. The government does not oppose a 12-day adjournment.

Moreover, Mr. Avenatti respectfully requests that his sentencing submission be due three weeks before any new sentencing date and that the government's sentencing submission be due one week after the due date for the defense submission.

Thank you for your consideration of this request.

Respectfully Submitted,
/s Scott Srebnick
Scott A. Srebnick
E. Danya Perry

cc: Government Counsel